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March 31, 1997

VIA HAND DELIVERY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

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MAR 31 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Re: *Reply Comments of the Republic of Panama in the Matter of  
International Settlement Rates, IB Docket No. 96-261*

Dear Mr. Caton:

Please find enclosed an original and nine copies of the Reply Comments of the Republic of Panama in the matter of International Settlement Rates, IB Docket No. 96-261.

Should you have any questions about this matter, please contact the undersigned counsel

Sincerely,

WILKINSON, BARKER, KNAUER & QUINN

*M. Veronica Pastor*

M. Veronica Pastor\*

Enclosure

\*Admitted in New York

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BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, DC 20554

In the Matter of

)

) IB Docket No. 96-261

International Settlement Rates

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MAR 31 1997  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**REPLY COMMENTS OF THE REPUBLIC OF PANAMA**

**REPUBLIC OF PANAMA**

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March 31, 1997

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## EXECUTIVE SUMMARY

The Republic of Panama submits these comments in response to the over 50 comments submitted in this proceeding. The Republic of Panama believes that this Commission should focus on implementing the recent World Trade Organization (WTO) agreement and increasing competition in the market for international telecommunications.

I. The comments confirm that the Commission does not have the jurisdiction to adopt its proposals. Under international law as set forth in binding ITU Regulations, no country may change unilaterally the settlement rates foreign carriers charge carriers to terminate calls in their foreign countries. The comments also demonstrate that U.S. laws preclude the Commission from adopting its proposals.

II. The comments confirm that the Commission's proposals will not remedy the perceived problem. The Commission's own data confirm that it is U.S. carrier profits, not international settlement rates, which are the major cause of high international rates in this country. Lowering settlement rates will not likely result in lower prices to consumers: accounting rates have declined during the last decade, and in that same period collection rates have continually increased. Also, lowering settlement rates will not cure the U.S. international settlement payments imbalance, because imbalanced traffic flows, not settlement rates, are the true cause of the U.S. net settlement outpayment.

III. The comments confirm that the classification of countries proposed by the Commission is arbitrary and flawed, and fails to take into account crucial factors such as economic realities, competitive situation and political factors.

In the Matter of )  
 ) IB Docket No. 96-261  
International Settlement Rates )

The Republic of Panama submits these reply comments in response to the over 50 comments submitted in this proceeding. The comments demonstrate a broad consensus among virtually all governments and most carriers, including some U.S. carriers, that (1) this Commission does not have the jurisdiction to adopt its proposals, and (2) even if it did, the rulemaking proposals will not remedy the problems the Commission has identified.

The Wall Street Journal Interactive Edition, *Nations Reach Pact in Talks Over WTO Telecom Rules* at 2 (Feb. 17, 1997), quoting Ambassador Charlene Barshefsky.

accomplish “far more to . . . provide U.S. consumers with identical, or far greater relief with respect to international calling rates.”<sup>2</sup>

# **I. THE COMMENTS CONFIRM THAT THE COMMISSION DOES NOT HAVE THE JURISDICTION TO ADOPT ITS PROPOSALS**

The comments confirm that the Commission does not have the legal authority to adopt its rulemaking proposals under either international or U.S. law.

## **A. The Commission’s Proposals Are Contrary to International Law**

The Republic of Panama demonstrated in its comments that, under international law as set forth in binding ITU Regulations, no country may change unilaterally the settlement rates foreign carriers charge carriers to terminate international calls in their foreign countries.<sup>3</sup> Virtually every other commenter addressing the issue reached the same conclusion.<sup>4</sup> For example, GTE explains in great detail why the rulemaking proposals are

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<sup>2</sup> Pacific Bell Communications at 8 and 10. *See also* GTE Service Corp. at 2 (“The Commission need not and should not adopt the proposed international settlement rate benchmarks; rather, it should focus on fostering competitive markets, which will drive accounting rates to appropriately lower levels.”)

<sup>3</sup> *See* Republic of Panama at 20-21

<sup>4</sup> *See, e.g.*, Hispanic-American Association of Research Centers and Telecommunications Companies (“AHCIRT”) at 2-3; Antigua and Barbuda at 1; Cable & Wireless at 4-5; Caribbean Association of National Telecommunications Organizations (“CANTO”) at 2; Chunghwa Telecom at 2; Compañía de Teléfonos de Chile, Transmisiones Regionales S.A. at 4-6; Deutsche Telekom AG at 5-9; Emetel at 1; France Telecom at 5-9; Grenada (Ministry of Works, Communications & Public Utilities) at 1; GTE at 9-13, A-1 - A-17; Hongkong Telecom International at 21-26; Telecom Japan, Inc. at 6-12; Telecommunications of Jamaica Limited (TOJ) at 4-6; Justice Technology Corporation at 2-3; Poland Ministry of Communications at 1; Portugal Telecom at 10-14; Post and Telegraph  
(continued. .)

“inconsistent with longstanding treaty obligations of the United States.”<sup>5</sup> Similarly, Pacific Bell notes that the proposals, if adopted, would likely “not survive review by [an international] dispute resolution panel in Geneva.”<sup>6</sup>

Only AT&T among all the commenters argues that international law does not constrain this Commission’s flexibility.<sup>7</sup> Notably, AT&T makes no attempt to demonstrate that the Commission’s proposals are consistent with international law; rather, it asserts that international law is *irrelevant* because “the United States in acceding to the ITU specifically ‘reserve[d] its rights to take whatever action is deems necessary, at any time, to protect its interests.’”<sup>8</sup>

AT&T’s assertion that ITU treaties are not binding on the U.S. government is inconsistent with this Commission’s own past rulings, a point which AT&T conveniently overlooks.<sup>9</sup> Moreover, while the U.S. may perhaps be free to breach the international treaties

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<sup>4</sup> (...continued)  
Department of Thailand at 2; Saudi Arabia at 1; Solomon Island Government at 1-3; Telecom Italia at 3; Telecomunicaciones Internacionales de Argentina, Telintar (“Telintar”) at 11-24; Teléfonos de México at 17-18; Telefónica del Perú at 6-9; Telefónica Internacional de España (“TISA”) at 6-20; Telia at 4-5; The Telecommunications Authority of Singapore at 2; Telecommunications Services of Trinidad and Tobago Limited (“TSTT”) at 2; Videsh Sanchar Nigam at 2-4

<sup>5</sup> GTE Service Corp., Appendix A at A.1-A.10.

<sup>6</sup> Pacific Bell Communications at 7.

<sup>7</sup> While several other U.S. carriers support the Commission’s proposals, including Frontier, MCI, Sprint, and WorldCom, these carriers make no attempt to address the Commission’s jurisdiction to adopt these proposals.

<sup>8</sup> AT&T at 57 (internal citations omitted).

<sup>9</sup> See, e.g., *Accounting Authorities Rules* 8 FCC Rcd 8680, 8681 (1993) (“Provisions of [ITU] Conventions and Regulations have treaty status and are therefore

(continued. )

it has signed, little would be accomplished by taking this unprecedented step. As Pacific Bell notes, if the Commission were to adopt its proposals, other “governments might well claim that, if the Commission has jurisdiction over settlement rates, so does each other country.”<sup>10</sup> The international telecommunications market would quickly fall into chaos if every government claimed the right to set the prices charged by foreign carriers.

President Clinton has hailed the recent WTO agreement on telecommunications as “landmark agreement.”<sup>11</sup> Now is not a time for an agency of the U.S. government to adopt rules which would contravene international law and undermine the very international cooperation and consensus that lead to the WTO agreement.

#### **B. The Commission’s Proposals Are Contrary to U.S. Law**

The Republic of Panama also demonstrated in its comments that U.S. laws preclude the Commission from adopting its proposals.<sup>12</sup> Most other commenters addressing this issue reach the same conclusion.<sup>13</sup>

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<sup>9</sup> (...continued)  
binding on the parties thereto.”); *International Communications Policies*, 2 FCC Rcd 7375, 7380 n.6 (1987) (“Under the Convention, the signatories have agreed upon certain basic regulations that member administrations . . . are bound to obey.”).

<sup>10</sup> Pacific Bell Communications at 6.

<sup>11</sup> The Wall Street Journal, Interactive Edition, *Nations Reach Pact in Talks Over WTO Telecom Rules*, at 1 (Feb. 17, 1997).

<sup>12</sup> See Republic of Panama at 17-20.

<sup>13</sup> See, e.g., Cable & Wireless at 5-10; Compañía de Teléfonos de Chile - Transmisiones Regionales S.A. at 3-4; Telintar at 24-30; Teléfonos de México at 18-20; TISA at 16-24; CANTO at 3; Portugal Telecom International at 5-9; Telecommunications of Jamaica Limited (“TOJ”) at 1-4; National Telecommunications Commission of the Republic of the Philippines at 25-30;

(continued. .)

AT&T again takes the lead in arguing that U.S. law empowers the Commission to set the rates foreign carriers may charge U.S. carriers for terminating U.S.-originated traffic in foreign countries. However, ignored altogether in AT&T's argument is any discussion of Section 303(r) of the Communications Act, which specifies that the Commission may not take actions "inconsistent with . . . any international radio or wire communications treaty or convention, or regulations annexed thereto."<sup>14</sup> This provision makes apparent that the U.S. Congress, in delegating authority to the Commission, intended for the Commission to abide by international treaties and regulations.

Also ignored in AT&T's comments are past rulings of the Commission and the views of the Executive Branch — rulings and views which are flatly inconsistent with AT&T's position. The Commission has repeatedly held that "our *jurisdiction* over international service *applies only* to one end of the service. Authority over the foreign end resides in the particular foreign correspondent."<sup>15</sup>

Similarly, the National Telecommunications and Information Administration (NTIA) has made clear that "[t]he Commission's jurisdiction over international telecommunications service applies only to the U.S. end of a service, and the Commission

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<sup>13</sup> (...continued)  
Kokusai Denshin Denwa Co. Ltd. ("KDD") at 2-7.

<sup>14</sup> 47 U.S.C. Sec. 303(r).

<sup>15</sup> *Uniform Settlement Rates on Parallel International Communications Routes*, 84 FCC 2d 121, 122 (1980) (emphasis added). *See also AT&T*, 88 FCC 2d 1630, 1640 (1982) ("In the case of overseas facilities, however, the facilities are jointly owned by the United States interests and their foreign correspondents who are *beyond our jurisdiction*"[emphasis added].), *RCA Global Communications*, 40 FCC 2d 161, 617 (1973) ("[W]e do not have *jurisdiction over the foreign entities* . . ."[emphasis added].)

cannot compel foreign entities to accept accounting rates prescribed by the Commission for U.S. carriers”.<sup>16</sup>

[I]nternational settlements involve certain issues that go beyond [the Commission’s] regulatory jurisdiction. \* \* \* Foreign governments and their telecommunications administrations . . . maintain independent sovereign authority over the foreign end of a call<sup>17</sup>

In summary, like most other commenters, the Republic of Panama believes that this Commission does not have the authority to adopt its rulemaking proposals under either international or U.S. law.

## **II. THE COMMENTS CONFIRM THAT THE COMMISSION’S PROPOSALS WILL NOT REMEDY THE PERCEIVED PROBLEM**

The comments further demonstrate that, even if the Commission had the legal authority to adopt its proposals, the proposals would not achieve their desired ends and would, in fact, be counterproductive. The Republic of Panama below highlights the key flaws of the rulemaking proposals

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<sup>16</sup> NTIA Reply Comments, CC Docket No. 90-337 at 7 (Sept. 27, 1991).

<sup>17</sup> NTIA Comments, CC Docket No. 90-337 at 17 and 22

**A. High U.S. International Collection Rates are Caused Primarily by “Record Profits” of U.S. Carriers**

The Commission commenced this rulemaking because of a concern that the rates U.S. consumers are paying for international calls are too high.<sup>18</sup> Yet the data shows overwhelmingly that the principal cause of high rates for international calls are the “record profits” currently enjoyed by U.S. international carriers, not international settlements payments.<sup>19</sup> The Commission’s own data confirms that it is U.S. carrier profits, not international settlement rates, which are the major cause of high international calling rates in this country. According to this data, U.S. consumers pay an average of 99 cents per minute for an international call — over six times what they pay for a domestic toll call.<sup>20</sup> Of this 99 cents, U.S. carriers pay foreign carriers an average of 36.5 cents (for terminating half the call) and they keep the remaining 62.5 cents for themselves.<sup>21</sup> Of this 62.5 cents which U.S. carriers retain, only 7.5 cents is needed for the U.S. carrier to recover its own costs.<sup>22</sup> Thus, of the 99 cents the U.S. consumer pays on average, more than half — 55 cents — is paid for U.S. carrier profits.<sup>23</sup>

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<sup>18</sup> See *NPRM* at 5 para. 9.

<sup>19</sup> Pacific Bell Communications at 10. See also *id.* at 3 (“Much of the problem is the direct result of the collection rates charged by U.S. carriers.”)

<sup>20</sup> See *NPRM* at 5 para. 9.

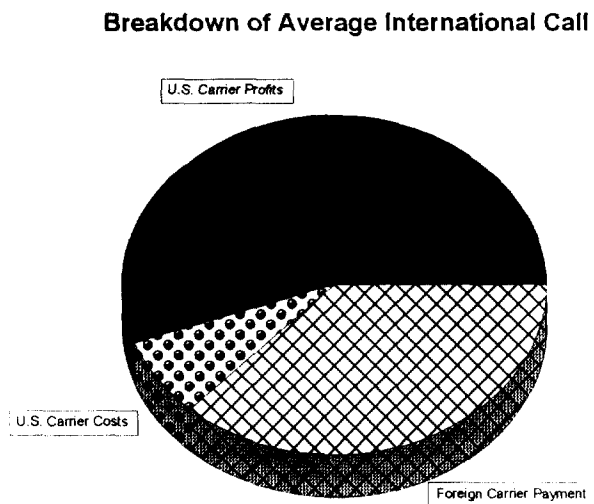
<sup>21</sup> *Id.* at 11 para. 26.

<sup>22</sup> *Id.* at 21 para. 51.

<sup>23</sup> As the United Kingdom notes (at 3 para 14), “[d]eveloping countries might question whether, with a margin of 175% between settlement and collection rates, a unilateral reduction on their part would in fact impact very strongly on the output price to the US consumer.”

Thus, as one commenter has noticed, “if the Commission’s goal is to benefit

U.S. consumers through lower collection rates rather than to line AT&T’s pockets, then the NPRM has focused on the wrong end of the call.”<sup>24</sup> Moreover, “[u]ntil the FCC requires U.S. carriers to charge U.S. consumers cost-based collection rates, the Commission is in no position to attempt to impose cost-based settlement rates on foreign carriers.”<sup>25</sup>



#### **B. Lowering Settlement Rates Will Not Likely Result in Lower Prices to Consumers**

The Commission apparently believes that U.S. international rates will fall if foreign carriers reduce their settlement rates.<sup>26</sup> However, as Pacific Bell has noted, “[t]he size of U.S. collection rates bear little relationship to foreign accounting rates. Accounting rates have steadily declined (in terms of cents per minute) during the last decade. During the same period, collection rates (and with them collection revenues) have continually increased.”<sup>27</sup>

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<sup>24</sup> TISA at 3.

<sup>25</sup> TISA at 25.

<sup>26</sup> See *NPRM* at 8 para. 18.

<sup>27</sup> Pacific Bell Communications at 4.

The Commission has observed this same phenomenon. It has acknowledged that settlement rates have fallen by 30% over the past four years alone<sup>28</sup> Yet it has also recognized that over the same period “residential IMTS pricing is significantly higher and more profitable than U.S. domestic long distance call prices, and some IMTS prices have risen over the past several years.”<sup>29</sup>

History thus teaches that U.S. carriers will not pass through all of the savings they realize through lower settlement rates. If the Commission cannot be assured that the savings will go directly to U.S. consumers, “none of its projected public interest benefits can be expected to result and the major basis for its jurisdictional claim disappears.”<sup>30</sup>

The Republic of Panama is as concerned as the Commission about the high prices of international calls, and it is adopting regulations that will have as a result the lowering of those prices through fair market forces. However, the NPRM does not in any way contemplate an indexing mechanism to ensure that reduction in the accounting rate will be passed on to consumers in the form of lower international calling prices. Such a measure is indispensable if the Commission is to succeed in accomplishing the goals stated in the NPRM.

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<sup>28</sup> See *NPRM* at 11 para. 26

<sup>29</sup> *AT&T International Non-Dominance Order*, 3 Comm Reg. (P&F) 111, 128-29 (1996).

<sup>30</sup> *Cable & Wireless* at 20

**C. Lowering Settlement Rates Will Not Cure the U.S. International Settlement Payments Imbalance**

The Commission in its *NPRM* appears to be concerned by the fact the growing U.S. net settlement payments imbalance. The concern is perplexing. As explained below, most of the traffic imbalance is caused by call-back and other services originated abroad but billed in this country. These services, and the resulting net settlements deficit do not harm U.S. consumers because most U.S. consumers do not use these services — except when they travel abroad, when they presumably benefit by the availability of these services.

Similarly, U.S. carriers are not harmed by either these services or the resulting net settlements deficit. To the contrary, U.S. carriers benefit substantially (to the detriment of foreign carriers) by the new revenue streams these services provide — services which generate hefty profits for U.S. carriers.

More importantly, reducing settlement rates will neither eliminate nor reduce greatly the U.S. settlements payments imbalance. As GTE notes, “imbalanced traffic flows, not settlement rates, are the true cause of the U.S. net settlement outpayments” and the Commission’s proposals “will not change the prevailing traffic imbalances.”<sup>31</sup>

There are many reasons why traffic between this country and other countries is not balanced, as many commenters explain.<sup>32</sup> However, a major reason for the traffic

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<sup>31</sup> GTE Service Corp. at 1 and 5-6.

<sup>32</sup> See, e.g., AHCIET at 6; DGT-Taiwan at 2; Cable & Wireless at 20-24; Chunghwa Telecom at 2-4; Caribbean Association of National Telecommunications Organizations at 5; France Telecom at 6-7; Deutsche Telekom AG at 2-3; GTE at 4-9; Telecommunications of Jamaica at 7-8; International Digital Communications at 2-3; Telecom Italia at 5-6; Telintar at 1-7; Telefónica del Perú at 9-11; TISA at 37-40; Pacific Islands Telecommunications Association at 3; Telstra Corporation Limited at 2-4; Telecom Vanuatu Limited at 2.

imbalance are the new alternative calling arrangements such as call-back in which calls originate in a foreign country but are billed in the United States. Call-back services substantially skew traffic balances because traffic that would have resulted in settlements payments being made to U.S. carriers instead generate settlements payments from U.S. carriers. The vast majority of call-back service providers operate out of the United States. A number of countries, including Panama, have outlawed call-back services. At the heavy insistence of those countries, the FCC agreed to give full faith and credit, under comity principles, to laws declaring certain forms of call-back illegal. The FCC has created a mechanism whereby countries can notify it of the illegality of call-back services in their territory and ask for the FCC's assistance in combating call-back operators. Penalties for providing certain call-back services into countries where the practice is outlawed include revocation of a carrier's Section 214 authorization. However, to this date, the Commission has not undertaken enforcement action against a single U.S. carrier.

Similarly, third-country calling has an even more negative impact on traffic balance because this arrangement results in U.S. carriers paying *two* settlements payments in order to patch together a call from one non-U.S. country to another. Yet the FCC has not undertaken a proceeding to correct this practice

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<sup>32</sup>

(...continued)

Telecommunications Services of Trinidad Tobago at 5-6; Singapore Telecommunications at 3-8; Videsh Sanchar Nigam Limited (India) at 4-6; Solomon Islands Government at 2-4; Lattlekom Sia at 2; Hongkong Telecom International at 7-13; International Telecom Japan, Inc. at 12-17; KDD at 7-11; Communications Authority of Thailand at 1-2.

The Commission has chosen to endorse these alternative services, as was its right, without consulting other telecommunications administrations. But having taken this step unilaterally, the Commission cannot now legitimately complain of the natural consequences of its action — namely, the growing net settlement payments imbalance.

Reducing settlement rates will not erase the traffic imbalance. To the contrary, reducing settlement rates could worsen traffic imbalance, thereby making worse the net settlements deficit this country is experiencing. As Deutsche Telekom explains, “there is no assurance that countries that comply with the Commission’s benchmarks will extend the same benchmark rates to other countries. Indeed, if those countries can continue to force above-cost rates on foreign carriers serving their markets, they would likely maintain that practice. The proportion of U.S. outbound minutes would continue to grow, fueled by reverse-charge services.”<sup>33</sup>

In summary, the Republic of Panama agrees with the comments of the United Kingdom that “regulators should concentrate on measures which lead to the reduction of the collection rate (i.e., the tariff actually charged to the consumers).”<sup>34</sup>

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<sup>33</sup> *Id.* at 6-7.

<sup>34</sup> United Kingdom at 2 para. 6.

### **III. THE COMMENTS CONFIRM THAT THE CLASSIFICATION OF COUNTRIES PROPOSED BY THE COMMISSION IS ARBITRARY AND FLAWED**

Foreign commenters unanimously noted that the FCC's proposed classification of countries as a basis for imposing a compliance calendar fails to take into account crucial factors such as economic realities, competitive situation and political factors. No allowances are made for the efforts undertaken by many countries to modernize their networks, to privatize their telecommunications operators, and to enter a new era of liberalization and competition. As the Republic of Panama already showed in its comments, such changes cannot occur overnight, and a reasonable transition period is necessary.

The Republic of Panama is a prime example of a country that would be harmed by the Commission's proposal. Panama has undertaken an extensive regulatory reform program, and is selling 49% of INTEL, S.A., its telecommunications operator, to a foreign investor. As part of its regulatory reform, Panama has adopted a forward-looking set of telecommunications regulations. INTEL S.A. has been given an exclusivity period of five (5) years in international service. An independent regulatory agency, the Ente Regulador de los Servicios Públicos ("Ente Regulador") already acts as watchdog for the industry. The Ente Regulador is charged by the telecommunications regulations with ensuring the existence of a pro-competitive environment (Article 7 of the Panamanian Telecommunications Regulations ["the Regulations"]). The regulations impose equal access obligations on all carriers, and forbid discrimination. More importantly, they require carriers to negotiate cost-based accounting rates (Article 29 of the Regulations), and direct telecommunications operators to negotiate operating agreements that comply with the

principles of nondiscrimination, protection of free competition and international cooperation (Article 25 of the Regulations).

The Republic of Panama is as keen on reducing the price of telecommunications services as is the United States. As the United States, it believes free and fair competition between carriers to be the best means to effect this reduction. To encourage competition, Panama has designed a regulatory framework that erects no barriers to entry, after a five-year exclusivity period. The exclusivity period is necessary in order to rebalance tariffs and permit the introduction of fair competition, while at the same time extending universal access and bringing service to a majority of remote rural areas.

The Commission should not mandate the prices charged for termination of calls at the foreign end, especially in fully liberalized countries where competition already operates or will operate within a known period of time. By the same token, the FCC should not dictate the appropriate transition period in a country's move towards full liberalization by imposing benchmarks by a certain date. The classification scheme proposed by the Commission is flawed, arbitrary and inappropriate and should be abandoned.

#### IV. CONCLUSION

The Republic of Panama agrees fully with the observation of Telefónica del Perú: "This proceeding is not about *whether* accounting rates should be further reduced. There is an international consensus — which [Panama] shares — that accounting rates

should continue to move towards cost. This proceeding is about *how* such reductions should be achieved.”<sup>35</sup>

The *NPRM* proposes to impose unilaterally U.S. views on carriers throughout the world. Like the vast majority of commenters, the Republic of Panama urges the Commission to reconsider its position and to seek instead a negotiated, multilateral consensus on accounting rate reform through the auspices of the International Telecommunications Union (ITU).

Respectfully submitted,

**REPUBLIC OF PANAMA**



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March 31, 1997

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<sup>35</sup> Telefónica del Perú, S.A. at 6.